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OFFICE OF PETITIONS

Patent No. 7,272,121	:	
Issued: 18 September, 2007	:	
In re Application of	:	DECISION
Wilkes, et al.	:	ON PETITION
Application No. 09/963,844	:	
Filed: 26 September, 2001	:	
Attorney Docket No. 94893	:	

This is a decision on the petition under 37 C.F.R. §1.78(a)(3), filed 16 September, 2009, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to a prior-filed application.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 C.F.R. §1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 C.F.R. §1.78(a)(2)(ii). In addition, the petition under 37 C.F.R. §1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. §120 and 37 C.F.R. §1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in 37 C.F.R. §1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 C.F.R. §1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Application No. 09/963,844 issued as Patent No. 7,272,121 on 18 September, 2007. The petition complies with the requirements of the regulations at 37 C.F.R. §1.78(a)(3) as to reference, surcharge and statement. The conditions for the granting of the petition have been met. Petitioner's deposit account has been charged the fee for a late claim for priority.

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A petition under 37 C.F.R. §1.78(a)(3), along with submission of a Certificate of Correction, is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application after issuance of the application into a patent.¹

However, Office records reflect that a Certificate of Correction of the substance and in the form sought by Petitioner contemporaneously with the instant petition issued on 20 October, 2009. The fee for the Certificate of Correction was charged

Accordingly, the petition under 37 C.F.R. §1.78(a)(3) is granted.

This matter is released to IFW Files Repository.

Any inquiries concerning this decision may be directed to John Gillon at (571) 272-3214. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.



Anthony Knight
Supervisor
Office of Petitions

¹ See MPEP 1481.